REMARKS

I. Background.

Applicants and applicants' attorney express appreciation to the Examiner for the courtesies extended during the recent interview held on 24 January 2008. This response contains the substance of the interview held with the Examiner. Reconsideration and allowance for the above-identified application are now respectfully requested.

II. Information Disclosure Statement.

The Office Action indicated that the information disclosure statement filed 8 October 2007 failed to comply with 37 CFR 1.98(a)(2). Included with this submission is an updated Form 1449 to resubmit the foreign patent documents previously uploaded but which were unavailable at the time of Examiner's review. Under the direction of Office of Patent Legal Administration, USPTO, further included within this submission is a document entitled "Related Cases" that lists those documents identified on pages 8-16 of the previously filed Form 1449.

III. Terminal Disclaimer.

The Office Action provisionally rejected claims 17-22 and 36-49 on grounds of nonstatutory obviousness-type double patenting in view of various co-pending applications and rejected certain claims on grounds of nonstatutory obviousness-type double patenting in view of an issued patent. The appropriate terminal disclaimers in compliance with 37 CFR 1.321(c) and 37 CFR 1.321(d), respectively, are included with this submission.

IV. Rejection on the Merits.

The Final Office Action, mailed November 19, 2007, considered claims 17-22 and 36-49. Claims 17-20, 36-41, 43-46, and 48 were rejected under 35 U.S.C. § 102(b) as being anticipated by Spence et al. (US Patent 6,488,692)(hereinafter "*Spence*"). Claims 17, 41, and 42 were rejected under 35 U.S.C. § 102(b) as being anticipated by Loshakove et al. (WO 00/56227) (hereinafter "*Loshakove*"). Claims 21 and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Spence*, as applied to claim 20, in further view of Gifford, et al. (US 5,904,697)(hereinafter "*Gifford*"), while claims 20, 36, and 46-49 were rejected under 35 U.S.C. 103(a) as being obvious over *Loshakove* in view of *Spence*. By this Amendment, claims 17 and 36 have been amended and claims 18 and 20-22 canceled. Applicant(s) respectfully traverses.

The Office Action asserts that *Spence* "discloses a clip having a ring-shaped body (MR). . . [and] spring elements (MD) that can be used to shape the clip" (Office Action, Page 2).

Loshakove was cited as disclosing "a generally annular-shaped device. . . [and] contains a spring element (310) between adjacent tines and looped elements" (Office Action, Page 5). In contrast, and as discussed with the Examiner, independent claims 17 and 36 recite, in part, respectively, "a biased spring element . . ., the biased spring element resiliently allowing the tips of the tines to be moved away from one another, the biased spring element comprising a curved inner region that limits penetration depth of the adjacent tines." As discussed during the interview, neither *Spence* nor *Loshakove* teaches nor suggests, either alone or in combination, a "biased spring element . . . that limits penetration depth of the adjacent tines", in addition to the other elements of independent claims 17 and 36. The disclosures of *Spence* and *Loshakove* do not identify spring elements "MD" or spring element (310) that are biased and that include "a curved inner region that limits penetration depth of the adjacent tines", as recited in claims 17 and 36.

Applicants respectfully submit that independent claims 17 and 36 are now in condition for allowance in view of the amendments and remarks made herein and that the rejections under both Sections 102 and 103 be withdrawn.

V. Summary and Conclusion.

In view of the foregoing, Applicants respectfully submit that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicants acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicants reserve the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicants specifically request that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.[1]

[1] Although the prior art status of the cited art is not being challenged at this time, Applicants reserve the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at 801-533-9800.

Dated this 19th day of February, 2008.

Respectfully submitted,

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